



AMERICAN PETROLEUM INSTITUTE

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Via Electronic Filing

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket 05-25

Dear Ms. Dortch:

The Telecommunications Subcommittee of the American Petroleum Institute ("API") submits these Comments regarding the business data services (special access) further notice proposed rulemaking (FNPRM) proceeding.

I. BACKGROUND

API is a national trade association representing more than 640 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members before federal and state regulatory agencies. The API Telecommunications Subcommittee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries. API is supported and sustained by companies that make use of a wide variety of wireline, wireless and satellite communications services on both a private and commercial basis.

II. PRELIMINARY STATEMENT

Exploration, development, and production of oil and natural gas frequently occur in remote areas, where there is little existing telecommunications infrastructure. API members, because of their remote operations, pay among the highest rates for BDS of any entity in the country. The focus of our comments will address the following fundamentals in terms of an overall effort by the Commission to reduce the end user's cost for broadband services that are primarily used for data traffic backhaul.

- 1) Support the concept that that relief from overregulation needs to be comprehensive for competitive areas
- 2) Address the competition test (paragraphs 270, et al)
- 3) Address sensible NDA protection (paragraphs 313, et al)
- 4) Address service contracts that do not reward customer loyalty but are antagonistic to new entrants (paragraphs 322, et al)
- 5) Address pricing rules for non-competitive areas (paragraphs 344, et al)

III. COMMENTS

Regulations in a Competitive Marketplace. In reading the 288 pages of the further notice, it is readily apparent that a simple service such as providing Internet-Protocol (IP) or time-division multiplexing (TDM) based Business Data Services (BDS) is overregulated. While it is understandable that many of these regulations stem from the break-up of the AT&T monopoly and the regional bell companies, API is in agreement that regulations need to be eliminated for competitive areas and drastically simplified for non-competitive ones. The primary metric for measuring the success of this effort will not only be an increase in service availabilities, but also a measurable reduction of prices for all broadband data service tiers.

Competition Rules Test. The rules test for competitive market test should be based on the number of terrestrial service providers per service area, with a cap on the amount charged for the initial connection. As noted on page seven of the notice, the FCC has historically utilized price cap and rate-of-return. Business consumer should have a choice of different levels of service at different corresponding rates. Without a cap in the capital investment that a customer is required to pay for that initial connection, the more likely it is that any recurring rate will not reflect the true cost of the BDS. The FCC may want to consider three tiers of bandwidth- low (1.544 to 54 MB), medium (54.1 to 999.9 MB), and high (equal to or greater than 1GB).

It is important to note that we express the data rate, regardless of whether it is circuit or packet switched, as the only measure of the service tier with one caveat. The latency per one-way connection must not exceed 50 mSec when measured between the service provider and the customer endpoint. This should adequately allow all “wired” services as well as most terrestrial wireless services to be viable.

We feel it is not necessary for the Commission to segment between circuit switched, packet-switched, or ethernet/IP. Any simple internet search can show that there is significant hardware availability to convert between TDM and ethernet methods that is easy to obtain and administer. The level of service should simply be based on bandwidth tiers as mentioned earlier in this response.

We find the Commission’s suggestion for further category segmentation by user is unnecessary, as reliability is reliability. For instance, modern cellular sites are predominantly seeking a reliable high tier of backhaul. This is a problem many times in rural areas – areas that tend to mostly be uncompetitive from an availability perspective. Outside of using Universal Service Funds (USF) to offset a BDS provider’s installation of fiber or other conventional wired backhaul, many cellular companies much like API entities must resort to using medium tier services or microwave connectivity to transport data back to a location where a fiber tie-in is available.

The same thing can be said for consumer or other business grade segmentation – this service sub-division normally represents the availability or features of the main service tier. While availability does matter to different types of customers, capping the cost for the initial connection we believe will ensure that service providers offer enough capacity in place to guarantee a high availability.

One final item of concern is to consider the definition of competition in determining the number of true market competitors. When a competing provider is simply a re-seller of an incumbent’s service, it is important that the incumbent demonstrates that they ensure delivery of the capacity (availability) for each of their resellers to meet the demand. They should have written agreements in place to address

the tier of service and connection charges which establish a competitive environment. Otherwise the reseller is just a middle-man for the incumbent and the market is really a non-competitive marketplace.

In summary, we have suggested simplification to the competition test by limiting the markets to three service tiers. The competitors must also be truly in competition within those tiers. To propagate the number of tiers by adding in customer types or circuit methodology we feel will create an overly-complex matrix of service offerings, nearly guaranteeing a highly regulated environment. This is more complex than modern needs dictate.

NDA Protection. We agree that there is pricing, technical, and connection charge information that would be beneficial to the Commission's mission. We do believe that a reasonable amount of information on the service, that is provided anonymously or if not, is kept confidential by the Commission and not subject to the Freedom of Information Act. This information should be explicitly defined by the commission. We feel our suggestion balances the needs of the Commission and Consumers of BDS services, without harming BDS providers or the overall business acumen of contracting for BDS services.

Contracts for Broadband Data Services. We agree with the Commission that so called "All-or-Nothing" contracts do not serve the public interest and effectively punish companies who are made to sign them. They are also a detriment to establishing a competitive environment for all but highly leveraged organizations. Positive incentives, such as tiered pricing, are a better way for BDS providers to reward larger customers, without hand-cuffing those same customers from exploring alternatives. Thus we agree that the Commission should extend the Tariff Investigation Order's prohibition to a general prohibition of all-or-nothing provisions within BDS contracts.

Pricing Rules for Non-Competitive Market Places. The need to communicate in the information age is practically a necessity. Absent true competition, a price cap appears to be a simple way to go about regulating the charges for each tier or service within a geographical area to meet this need. We agree that it appears to be the "time honored" and best method to balance the need for profitability by the BDS provider, and the need for reasonable priced services for the customer. It is important that each market be geographically small, so that large service areas with sparse offerings do not subvert the definition of non-competitive.

The commission should strive to re-evaluate the price cap on a bi-annual basis to not penalize the consumer for progress. A balance must be achieved to ensure that the pricing is high enough to attract new entrants into a non-competitive area so that the area becomes competitive, benefitting the consumer, but remains low enough to not disadvantage those who need BDS services. We do not see any disadvantage in using all pricing data on comparable telecom services, whether BDS based or not, and reductions for productivity improvements, provided they do not adversely impact the availability of services. Again, our model concerns itself for (3) rate tiers, regardless of method as discussed previously in this response.

Finally, the Commission should consider the use of Universal Service Funds (USF), licensed radio spectrum grants, and other progressive measures to both extend the price cap to include the initial connection charges, as well as to seed competition into non-competitive markets. Companies that especially demonstrate their ability to provide medium and high tier BDS services in non-competitive marketplaces, should be rewarded with these incentives to enter new areas.

III. CONCLUSION

API applauds the FCC for undertaking this initiative to reform BDS. The competitive benefits have flowed unevenly to consumers and the landscape is clearly different than what was envisioned in the early 2000s. Incumbent local exchange carriers (ILECs) and regional bell operating companies (RBOCs) are challenged to deliver traditional special access services competitively. A balance must be achieved to ensure that the pricing is high enough to attract new entrants into a non-competitive area so that the area becomes competitive, benefitting the consumer, but remains low enough to not disadvantage those who need BDS services. To achieve this, the FCC should simplify regulation in competitive and non-competitive areas, cap the capital investment for the initial connection to reflect the true cost of the BDS, ensure information on the service remains confidential, prohibit all-or-nothing provisions within BDS contracts, and consider using the USF and other progressive measures to both extend the price cap to include the initial connection charges.

Respectfully submitted,

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Stephen Comstock